IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 24/1992
AND
MISC. CIVIL APPLICATION NO. 864/2004

1. The Goa Foundation,
   being a registered Society,
   registered under the provisions
   of the Societies Registration Act, 1860,
   having its Office at Rm. 7, above
   Mapusa Clinic, Mapusa 403 507 Goa.

2. Dr. Claude Alvares, Indian Habitant,
   resident of Parra, Bardez, Goa. ..... Petitioners.

V/s.

1. Fomento Resorts & Hotels Ltd.,
   25 Ormuz Road, Panaji, Goa.

2. M/s. Sociedade e Fomento
   Industries Pvt. Ltd., Villa Flores de Silva
   Erasmo Carvalho Street,
   Margao, Goa.

3. The North Goa Planning & Development
   Authority by its Member Secretary,
   having Office at Panaji, Goa.

4. State of Goa through its Chief
   Secretary, having Office at
   Secretariat, Panaji, Goa.

5. Panjim Municipal Council
   through its Chief Officer, Panaji, Goa

6. Town and Country Planning Board by its
   Member Secretary, Town and Country
   Planning Department, Ganga Niwas,
   Panaji, Goa.

7. Goa State Committee on Coastal
   Environment by its Member Secretary,
   Town and Country Planning Department,

Ganga Niwas, Panaji, Goa. ..... Respondents.

Mrs. Norma Alvares, Advocate for the petitioners.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudesh Usgaonkar, Advocate for respondents No.1 and 2.

Mr. V. P. Thali, Advocate for respondent No.3.

Mr. S. S. Kantak, Advocate General with Ms. Rakhi Chodankar, Addl. Govt. Advocate for respondent No.4.

CORAM : KSHITIJ R. VYAS, CJ &
RANJANA DESAI, J.

DATE : 5TH JUNE, 2006.

ORAL JUDGMENT : (Per KSHITIJ R. VYAS, C.J.)

The first petitioner being a Society and the second petitioner who is the Secretary of the first petitioner have approached this Court for appropriate reliefs invoking P.I.L. jurisdiction of this Court initially with the prayer directing respondents No.1 and 2 to place on record the sanction, if any, granted to respondents No.1 and 2 including the minutes of all the meetings of the Eco-Development Council, the Eco-Control Committee, Inter-Ministerial Committee, Planning and Development Authority, the Town and Country Planning Board, the Goa State Committee on Environment in relation to the illegal floors and encroachment and after going through the legality of the said permissions, quash and set aside the same; for an order

quashing the PPDA Order No.PDA/T/7471/118/92 dated 20th April, 1992 and further for an order of demolition of the constructions made pursuant to the order passed by this Court dated 16.9.1993 in Misc. Civil Application No.176/93. The petition has been amended subsequently, whereby the petitioners raised various submissions and grounds. It is not necessary for us to refer to and consider the grounds and to the affidavit in reply filed by the respondents, as in our opinion, the petition itself can be disposed of in view of the subsequent development that has taken place during the pendency of the petition.

2. During the pendency of the writ petition, respondent No. 2 i.e. M/s. Sociedade e Fomento Industries Pvt. Ltd., filed Misc. Civil Application No.864/2004 praying therein that respondents No.1 and 2 be permitted to erect fourth floor as per approval dated 13th April, 1992 and 20th April, 1992 obtained pursuant to application dated 2.2.1991 by vacating the interim order passed by this Court dated 22nd January, 1992. It is further prayed therein that respondents No.1 and 2 be exonerated from the undertaking given to this Court as has been mentioned in point 8 of the order dated January 22, 1992. Exhibit R-6 to the said application is the letter dated 19th October, 2004 addressed by the Member Secretary, Goa Coastal Zone Management Authority (for short “GCZMA”). Paragraph 1 of the said letter is relevant wherein the following reason is given :

> "As the area in which the Cidade de Goa Resort is located, is reclassified as CRZ-II w.e.f. 3rd December, 2001, any new construction proposed on the landward side of existing authorised structures can be permitted in accordance to the prevailing (local) Town & Country Planning Regulations. The resort building in question where the construction work was suspended, following the Order dated 22nd January, 1992 of the Hon'ble High Court of Bombay in Writ Petition No.24 of 1992, is located on the landward side of existing authorised structures. Any proposal for construction works that are permissible in CRZ-II should be submitted for prior approval of the GCZMA."

3. From the letter dated 3rd December, 2001 annexed to the petition at page 291 by the Special Secretary, Government of India, Ministry of Environment & Forests, New Delhi to the Chief Secretary, Government of Goa, Panaji, it is clear that the area from the Dona Paula Cove/Bay of Vainguinium Beach, Map No.2, where the hotel of respondents No.1 and 2 is situated is reclassified from CRZ-III to CRZ-II. The learned Counsel for the respondents No.1 and 2 does not dispute the fact that the CRZ Regulations are applicable to the land of respondents No.1 and 2 where the hotel is constructed. In view of this, any new construction proposed on the landward side of existing authorised structures can be permitted in accordance with the

prevailing (local) Town and Country Planning Regulations. Further any proposal for construction of works that are permissible in CRZ-II should be submitted for prior approval of the GCZMA. We, accordingly, direct the respondents No.1 and 2 to make an application with proposal for construction work permissible under CRZ-II to the GCZMA for such permission. Needless to say that in case such an application is made by the respondents No.1 and 2, the same shall be considered in accordance with law.

4. The learned Senior Counsel for respondents No.1 and 2 submitted that he may be exonerated from the undertaking given to this Court in view of the order dated January 22, 1992. We accept the request of the learned Senior Counsel on behalf of the respondents No.1 and 2 provided that the respondents No.1 and 2 shall obtain prior approval before undertaking any construction from the GCZMA.

5. In view of this, nothing further is required to be done. The writ petition as well as the misc civil application stand disposed of in the aforesaid terms. Rule is made absolute in the aforesaid terms No order as to costs.

KSHITIJ R. VYAS, CJ.

RANJANA P. DESAI, J.